

REVISED ANALYSIS

Author: Sen. Rev. & Tax. Comm. Analyst: Jeani Brent Bill Number: AB 1040

Related Bills: See Prior Analysis Telephone: 845-3410 Amended Date: 05-23-97

Attorney: Doug Bramhall Sponsor: _____

SUBJECT: Court Debt/Fin Corp. Offset/Corp. Def./Bank Information Rptg/Bonds/
Credit Election

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED March 31, 1997, and May 23, 1997,
STILL APPLY.

☒ OTHER - See comments below.

SUMMARY OF REVISION

The department's analyses of the bill as amended March 31, 1977, and May 23, 1997, are revised to reflect a revised interpretation of the impact of the provisions of this bill that would remove the election provision from the Los Angeles Revitalization Zone (LARZ) sales or use tax credit, the Local Agency Military Base Recovery Area (LAMBRA) sales or use tax credit and the LAMBRA hiring credit and replace it with a provision limiting the taxpayer to one credit.

SUMMARY OF BILL

This bill, sponsored by the Franchise Tax Board, would do the following:

1. Allow the department to receive federal information return data regarding the discharge or cancellation of indebtedness.
2. Create a reporting requirement for payers of interest or dividends from bonds issued by another state that are exempt from federal taxation.
3. Allow the state or county to refer to the department for collection court-ordered amounts that are associated with court-ordered fines, penalties, forfeitures or restitution orders. This provision also would allow restitution orders due a victim to be referred to the department for collection, but only if (1) the account

DEPARTMENTS THAT MAY BE AFFECTED:

____ STATE MANDATE

____ GOVERNOR'S APPOINTMENT

Department Director Position:

____ S ____ O
____ SA ____ OUA
____ N ____ NP
____ NA ____ NAR
____ PENDING

Agency Secretary Position:

____ S ____ O
____ SA ____ OUA
____ N ____ NP
____ NA ____ NAR
DEFER TO _____

GOVERNOR'S OFFICE USE

Position Approved _____
Position Disapproved _____
Position Noted _____

Legislative Director Date
Johnnie Lou Rosas 6/30/97

Agency Secretary Date

By: Date:

is referred by a governmental entity that has the authority to collect on behalf of the victim, and (2) the authorized governmental entity voluntarily agrees to refer the debt to the department for collection and agrees to other administrative duties relating to account referrals and collection distributions.

4. Modify the definition of "corporation" to include banks, unless specifically provided otherwise; provide specific language to exempt banks from existing provisions of the Administration of Franchise and Income Tax Laws and Regulations (AFITL) and the Bank and Corporation Tax Law (B&CTL) for which intentional differences between the treatment of corporations and banks is clear, such as the corporation income tax; and replace the phrase "bank or corporation" with the term "corporation" throughout the B&CTL and the AFITL. The department's policy of not applying Section 24411 to banks would be reversed, allowing a foreign bank to pay exempt dividends to a domestic water's-edge taxpayer.
5. Remove the election provision from the Los Angeles Revitalization Zone (LARZ) sales or use tax credit, the Local Agency Military Base Recovery Area (LAMBRA) sales or use tax credit and the LAMBRA hiring credit and replace it with a provision limiting the taxpayer to one credit.
6. Amend Chapter 952 of Statutes of 1996, which enacted SB 715, to reflect that its provisions apply to taxable or income years beginning on or after January 1, 1997.
7. Repeal sections referring to offset provisions for personal property taxes or license fees that are obsolete, and delete references to those sections contained in other sections (B&CTL).
8. Delete an obsolete reference that requires all apportioning taxpayers to maintain specified information.
9. Change Section 19340 of the AFITL to reflect that when an overpayment is credited against any amount due, any interest on that overpayment also will be credited against any amount due. This provision also would include a reference to "this part," which is the AFITL.
10. Correct a reference to Section 19276 of the AFITL contained in the Business and Professions Code and the Insurance Code to reflect that section's renumbering.
11. Delete an unnecessary and redundant reference to R&TC Section 23097.
12. State the intent of the Legislature to replace references to Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition, with code section references to the North American Industry Classification System (NAICS), expected to be published in 1997.

SUMMARY OF TAX REVENUE EFFECT

The following table reflects the estimated impacts of the various provisions of this bill.

Estimated Revenue Impact of AB 1040 As Proposed to be Amended (In Millions)			
Provision	1997-8	1998-9	1999-0
1. Information Reporting/Discharges	Possible acceleration of revenue collections		
2. Information Reporting/Bond Interest	\$0	\$5	\$11
3. Court-Ordered Debt Collection	No Revenue Impact		
4. Corporate Definition to Include Banks	-	(\$1)	(\$2)
5. Remove Credit Elections **	-	-	(\$3)
6. Operative Date	No Revenue Impact		
7. Financial Corporation Offset	No Revenue Impact		
8. Apportioning Reference Correction	No Revenue Impact		
9. Interest on Overpayment	No Revenue Impact		
10. Reference Correction	No Revenue Impact		
11. Redundant Reference	No Revenue Impact		
12. Legislative Intent	No Revenue Impact		
Total	-	\$4	\$6

** \$1 million in annual revenue losses after fiscal year 1999-0.

5. REMOVE CREDIT ELECTION

The "Program Background" and "existing law" discussions in the department's analysis of the bill as amended March 31, 1997, still applies.

This provision would remove the election provision from the LARZ sales or use tax credit, the LAMBRA sales or use tax credit and the LAMBRA hiring credit and replace it with a provision limiting the taxpayer to one credit with respect to qualified property or employees that qualify for the specified credits (i.e., LARZ or LAMBRA sales or use tax credit or LAMBRA hiring credit).

The LARZ sales or use tax credit is available both to individuals and corporations. These credit provisions require the taxpayer to make an election, on the original return, choosing one credit if the expenditure for the property or employee's wages qualifies the taxpayer for more than one credit (e.g., the property qualified for the LARZ sales or use tax credit, enterprise zone sales or use tax credit, and manufacturer's investment credit). This bill would eliminate the election that is required as part of the statutory policy to limit taxpayers to one credit for any item of qualified property under this incentive; therefore, taxpayers would be able to claim the credit on an amended return as well as an original return.

During the department's continuing review of all LARZ statutory provisions, an issue that may be created by this provision of the bill was identified for corporate taxpayers that previously had not been considered. It has been the department's interpretation of the statutory provisions that if the LARZ credit is available to the taxpayer, no other credits may be claimed for the same qualified property, irrespective of whether the other credit statutes contain a similar limitation; thus, corporate taxpayers whose property qualifies for the LARZ may use only one credit. The basis for this interpretation is that the

LARZ sales or use tax credit in the existing Bank and Corporation Tax Law (B&CTL) uses the word "allowable" instead of "allowed:" "In the case where a credit is **allowable** for qualified property under more than one section in this part, the taxpayer shall make an election, on the original return filed for each year, as to which section applies to the qualified property." The comparable Personal Income Tax Law (PITL) section uses the word "allowed," thus the limitation does not exist for individuals. For tax law purposes, the word "allowable" means the credit is available to be claimed, whereas the word "allowed" refers to a credit actually claimed on a return.

The provision in this bill uses the word "allowed" for both the PITL and B&CTL sections: "If the taxpayer is **allowed** a credit for qualified property pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to that qualified property." Consequently, department staff is of the opinion that the use of the word "allowed" in the bill would limit a taxpayer to only the LARZ sales or use tax credit if the taxpayer claims that credit; however, it would permit both individual and corporate taxpayers, where appropriate, to claim two or more other credits for the same item of property so long as the LARZ sales or use tax credit is not claimed (e.g., both the enterprise zone sales or use tax credit and the manufacturer's investment credit).

The corporate taxpayers that would benefit from this change primarily would be those located in the geographic area of Long Beach where the LARZ overlaps the Long Beach Enterprise Zone, although other enterprise zones in the Los Angeles area also may overlap the LARZ.

REVENUE ESTIMATE DISCUSSION

The following revenue impact is based on a strict interpretation of existing law (i.e. dual credits are not allowed in LARZ/enterprise zone situations) and taxpayer self-assessed behavior of generally claiming both credits. When the department identifies those taxpayers incorrectly claiming tax credits, it is assumed that taxpayers would comply. It is also assumed the legislative change would be retroactive and first apply to income and taxable years beginning in 1995.

This estimate was based on 1995 tax return data for LARZ taxpayers that also are located in enterprise zones. According to this data, there were approximately \$2 million applied sales tax and hiring credits for manufacturers in enterprise zones. Of these credits it is estimated that approximately 60% (\$1.2 million) is attributable to the sales tax credit, of which approximately 75% (approximately \$900,000) is projected to be relevant investment property (located in both zones). Based on departmental discussions regarding taxpayer behavior, it is estimated that approximately 90% of the relevant taxpayers located in both the LARZ and enterprise zones (primarily the Long Beach area) currently are claiming both the manufacturer's investment credit and the enterprise zone sales or use tax credit on the same qualified property. This yields approximately \$800,000 in sales or use tax credits being claimed by taxpayers that also are claiming a manufacturer's investment credit for the same property. Under this estimation, the revenue impact of allowing taxpayers in the LARZ/enterprise zone overlap areas to choose dual credits (e.g., both the manufacturer's investment credit and the enterprise zone sales tax) would be approximately \$1 million annually. The larger impact for 1999-0 reflects four income years, 1995 through 1998, assuming they would have been identified in audit.